



Arbitration Decision

National Grain and Feed Association

July 20, 1995

Arbitration Case Number 1744

Plaintiff: Golden State Commodities, Ceres, Calif.

Defendant: Soda Springs Elevator, Soda Springs, Idaho

Statement of the Case

On Feb. 25, 1994, Golden State Commodities Inc. purchased from Soda Springs Elevator the contents of 30 cars of barley stipulating a test weight of 42 pounds or better. The terms of the contract stated a price of \$106 per short ton delivered UPRAIL, HATCH STATION, with origin weights to apply. The contract was silent concerning the type of inspection to govern. The shipment covered was 10 cars per month with five-car units to apply the first and last half of each month for March, April and May.

There was no broker involved in this trade, although there was an intermediary party to the trade. While not a subject of this arbitration, the intermediary party did act as a go-between between the buyer and seller. However, the buyer and seller ultimately agreed to contract directly with each other, with no contractual involvement of the intermediary party.

While a telephone conversation occurred between Golden State Commodities and Soda Springs Elevator confirming the consummation of a trade, it appeared that details of the trade were not discussed thoroughly between the two parties. Soda Springs Elevator could not produce a copy of its own contract, but did sign and return Golden State Commodities' contract with a hand-written change deleting the term "42 pounds or better" and replacing it

with the term "feed barley." Golden State Commodities received the signed and amended contract on March 14, 1994. There was no written advice other than the hand-written change on Golden State's contract, nor oral communication as to the discrepancy in terms of the contract by Soda Springs to Golden State Commodities.

The first five-car unit was billed on March 4, 1994. Upon delivery of the cars, destination analysis, as well as the origin grade certificates, confirmed that the initial shipment of barley did not make the contract specification of 42 pounds or better. Golden State accepted the barley on contract, as their customer agreed to take delivery so long as the balance of shipments met the 42-pound specification as warranted by Golden State. There was a question as to the quality of the communication between Golden State and Soda Springs concerning the expectation of 42-pound barley on subsequent shipments. There was discussion about screening the barley on future shipments, but it appeared there was no meeting of the minds on this aspect of the trade.

The second shipment of barley occurred on March 30, 1994 and was received on track at destination on Friday, April 8, 1994. Three cars of this shipment were unloaded and shipped to the Golden State customer. On Monday, April 11, 1994, the customer arrived and obtained destination samples of the barley. Finding that the barley was substantially

outside of the 42-pound requirement, the shipment was rejected. The origin grades provided by Soda Springs also suggested that the barley was substantially less than 42 pounds test weight. Golden State notified Soda Springs by telephone prior to noon on April 11, 1994 that the cars were being rejected. Soda Springs resold the two cars that were still on track. The three cars that were unloaded were sold out by Golden State, which reimbursed that amount to Soda Springs.

On April 29, 1994, Soda Springs attempted to apply another unit against the contract, but Golden State refused application. Soda Springs then resold the balance of the contract (20 cars) at the prevailing market.

Golden States filed a claim in the amount of \$10,320, which it said represented the difference (profit) between the value of the barley it purchased from Soda Springs and then sold to its customer. Soda Springs counter-claimed in the amount of \$21,153.02, representing what it said was the market difference between the price it sold the barley to Golden State and the sales price of the barley rejected by Golden State, as well as the difference in market price of the remaining 20 cars of the contract that were canceled out with Golden State.

The Decision

The arbitrators found in favor of the plaintiff, Golden State Commodities Inc.

In reaching their decision, the arbitrators ruled that Golden State's contract was the contract of

record. Soda Springs could not produce a contract of its own -- confirmed or otherwise -- in accordance with Grain Trade Rule 6(a) and 6(c) (confirmation). Grain Trade Rule 41 also is applicable, as contracts cannot be amended without the consent of the buyer and seller. There was no proof that mutual consent had been reached concerning this aspect of the trade. Nor had proper written confirmation been made by Soda Springs of the difference in test weight specification of the contracts.

The Award

The arbitrators made no award to the plaintiff. There was no evidence of economic harm provided by Golden State Commodities in market differentials between where it had bought the Soda Springs barley and the replacement market to fulfill its obligations. Golden State did not quantify adequately that damages were incurred as a result of lack of performance on the contract by Soda Springs. Profitability of trades was not guaranteed.

Submitted with the consent and approval of the arbitrators, whose names are listed below.

William M. Hale, *Chairman*
Cargill Inc.
Minneapolis, Minn.

Charles E. Gilbert
A.L. Gilbert Co.
Oakdale, Calif.

Vince Goecke
Columbia Grain Inc.
Great Falls, Mont.